U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

C-1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUL 19 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as an associate minister. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience as an associate minister immediately preceding the filing date of the petition; (2) that the duties of the position are congruent with the regulatory definition of a "minister," or (3) that the beneficiary first entered the United States with the intention of working as a religious worker.

On appeal, filed August 1, 2003, counsel states that a brief will be forthcoming within 30 days. The only subsequent submission in the record is a request for an extension of an additional 21 days, with the brief to be submitted no later than September 23, 2003. To date, nine months after this request, the record contains no further submission. Absent the appellate brief, we shall consider the record to be complete as it now stands, and we will limit consideration to the arguments offered with the initial appellate submission.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on May 17, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an associate minister throughout the two years immediately prior to that date. The beneficiary entered the United States on March

10, 2001, and therefore the petitioner must establish the beneficiary's experience both in the United States and abroad.

[redacted] pastor of the petitioning church, states "[o]n February 22, 1998 [the beneficiary] was ordained a minister by our mother church in Jamaica. [The beneficiary] has served [first as a] missionary and later a minister . . . for five years."

[redacted] pastor of the mother church in Jamaica, states that the church "employed [the beneficiary] . . . from February 1998 to March 2001." [redacted] does not specify what the beneficiary's job title or duties were during that period, although [redacted] repeatedly adds the title "Minister" to the beneficiary's name. The petitioner submits numerous certificates awarded to the beneficiary in Jamaica, including her 1998 ordination certificate, but these documents do not specify when the beneficiary ceased to be a missionary and began to work full-time as a minister.

The director requested further information regarding the beneficiary's work history. In response, the petitioner has submitted a new letter from [redacted], who indicates that the beneficiary began serving as a minister upon her April 1999 ordination.

In a new letter, [redacted] states that the beneficiary "entered the U.S.A. to visit family and vacation. We approached her and offered her a position as an associate minister." He does not specify when the petitioner approached the beneficiary about this position. He further states that "[o]ur church sponsored [the beneficiary] to be our associate minister in August, 2001. She served our church in this role on a voluntary basis until she was authorized to receive a salary. The Immigration Service granted her an 'R-1' visa effective November 14, 2001, and we immediately commenced her remuneration at a rate of $300.00 weekly." Elsewhere in the same letter, [redacted] repeats "we have . . . paid a salary to [the beneficiary] since November, 2001." Nowhere is there any indication that the payments were retroactive to an earlier time.

The petitioner submits copies of recent paychecks, indicating that the petitioner currently pays the beneficiary $300 a week. The petitioner also submits a copy of Internal Revenue Service Form 1099-MISC, purporting to indicate that the petitioner paid the beneficiary $15,600 in 2001. This sum equals a full year (52 weeks) of the beneficiary's current wage of $300 per week, even though the petitioner claims not to have paid the beneficiary until November, and indeed she was still in Jamaica during the early months of 2001. This inconsistency, coupled with the lack of corroborating documentation, raises questions about the 2001 Form 1099-MISC and, by extension, about other documents in the record. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

The director determined that the evidence submitted was not sufficient to establish that the beneficiary continuously carried on the vocation of a minister throughout the entire two-year qualifying period. On appeal, counsel asserts that the director has imposed too strict a burden of proof on the petitioner, and states "it is axiomatic that the evidence, even equivocal, must be read in the light most favorable to the applicant for a benefit."

In order to meet a "preponderance of the evidence" standard, the petitioner must submit evidence to establish that preponderance. In this instance, the record is fragmentary at best. Furthermore, because of the dubious nature of some of the evidence submitted (particularly the 2001 Form 1099-MISC), the petitioner has not credibly established that the beneficiary continuously worked as an associate minister throughout the entire two-year period that ended on the petition's filing date. We are not obliged to look at evidence in the light most favorable to the beneficiary or the petitioner when that evidence lacks credibility; to hold otherwise would condone, even encourage, the submission of fraudulent documentation.

The next issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definition:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

[redacted] states that the beneficiary's "duties will include, but are not limited to: performing religious services; bible studies; teaching Sunday school; counseling parishioners; and generally assisting me, pastor of the church." Bishop Thomas states that, in Jamaica, the beneficiary's duties were as follows: "prepare and deliver sermons, lead congregations in religious services, visit the sick and suffering, comfort the bereaved and counsel those who seek guidance, weddings and funerals."

The petitioner has submitted copies of ordination certificates, in an effort to indicate that the beneficiary is truly a minister rather than a lay preacher. The petitioner's submission does not demonstrate that the beneficiary, in the United States, is authorized to perform, or has actually performed, the full range of duties normally associated with authorized clergy. Ordination by a recognized religious organization is not conclusive as to who qualifies as a minister for purposes of the Act. *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). That precedent decision also indicates that we may take into consideration the requirements that an alien had to meet in order to qualify for ordination.

Further, while the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee, supra.*

The director determined that the petitioner had not established the criteria for ordination, or that the denomination traditionally employs full-time, paid associate ministers. On appeal, counsel offers a general objection to this finding, but no coherent rebuttal.

The final issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), requires that the alien seeking classification "seeks to enter the United States . . . solely for the purpose of carrying on the vocation of a minister." The director concluded that, because the beneficiary originally entered the United States as a B-2 nonimmigrant visitor, the beneficiary did not enter the United States solely for the purpose of working as a minister. On appeal, counsel argues that the director relied on an impermissibly restrictive interpretation of the statute and regulations.

We agree with counsel that the director's finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks* to enter," which describes the entry as a future act. We therefore withdraw this particular finding by the director.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.